IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.721 OF 2001

Alamgir, S/o Abdullah N. Shaikh .. Appellant

versus

Inamullah, S/o Abdullah N. Shaikh .. Respondents

& Others

...

Ms. Brenda D'Souza i/b. M.P. Vashi & Associates for appellant.

N. U. Khan for the resplondents - absent.

CORAM : D.G. KARNIK, J

DATED :6th October, 2006

P.C.:

1. Heard learned counsel for the appellant. None present for the respondents when called.

2. This appeal is directed against the order dated 24th July,2001 passed by the judge, city civil court, Mumbai allowing Notice of Motion No.1596 of 2001 filed by the respondent no.1 for appointment of a receiver.

3. The appellant and the respondents are brothers. Their father owned two shops, one big and one small, both situated on plot no.226, Mangal Puri Goswami, Hemlata Mangal Puri Estate, Hissa No.14, situated at L.B.S. Road, Kurla (West), Mumbai. On 21st October, 1997 a family settlement took place between the father and the sons and a deed of family settlement was also executed. Under the said deed of settlement it was agreed that the small shop would go exclusively to the father and the big shop would go to the four brothers i.e. appellant and respondents herein. The four brothers also agreed to contribute a sum of Rs.2,22,000/-, Rs.55,500/- each for paying of the liabilities of the father. By the settlement they agreed that each of the brothers would conduct the business in the big shop (herein after referred to as 'the suit shop') by taking turns of eleven months each.

4. According to the respondent no.1, as per the said

family settlement the appellant first took the turn of carrying on the business for eleven months. However, at the end of the eleven months he did not return possession of the suit shop to the other brothers to enable them to enjoy their turn. The respondent no.1, therefore, filed a suit bearing Suit No.2051 of 2001 in the city civil court against the appellant and the remaining brothers. In the said suit the respondent no.1 made an application for appointment of a court receiver. He pleaded that the appellant had no right to continue in possession of the suit shop as his period of eleven months had been over and that respondent no.1 had right to take possession of the suit shop. He claimed that he had the present right to claim possession of the suit shop in terms of the family settlement. After hearing the parties the learned judge of the city civil court allowed the motion and appointed the court receiver as the receiver and further directed the court receiver to hand over possession of the suit shop to the respondent no.1 for the period of eleven months on his executing the usual agency agreement. The said order dated 24th July, 2001 is impugned in this appeal.

5. Learned counsel for the appellant submitted that

the city civil court erred in passing the said order. She contended that the father was a necessary party to the suit and as the father was not joined as a party to the suit, the suit was not maintainable. Therefore, submitted the counsel, that the court could not have appointed a receiver.

6. Perusal of the deed of the family settlement, a copy of which is annexed as Exhibit A to the appeal memo, shows that the family owned two shops, one big and one small. Under the deed of family settlement, small shop was allotted to the father and big shop was allotted to the four brothers. The father was not given any share in the big shop which is the subject matter of the suit. As the father had no share in the suit shop, in my view, the father is not a necessary party to the suit. In the family settlement the father was given exclusive right over the small shop and only four brothers were given shares in the suit shop which was to be enjoyed by them by possessing it for eleven months each by rotation. The contention of the learned counsel for the appellant that father was necessary party to the suit, does not prima facie appeal to me. Without expressing any final opinion, as the suit is to be finally decided, it can be said that the respondent

no.1 has prima facie shown that the father had no share in the suit shop and was not necessary party to the suit.

7. The family settlement dated 21st October, 1997 provides for the enjoyment of the suit shop by the four brothers by rotation of eleven months each. The appellant having obtained possession of the suit shop in pursuance of the family arrangement, was bound to follow the terms of the family settlement and was bound to hand over possession of the suit shop to his brothers after end of 11 months. He having failed to do so, the learned judge was right in appointing the court receiver as the receiver with direction to the court receiver to allow the four brothers to possess the suit shop as per the family settlement.

8. For these reasons, the appeal is dismissed with costs.

(D.G. KARNIK, J)